



SENTENCING IN WISCONSIN

Snapshots of Information on Wisconsin Sentencing

May 26, 2006

Vol. 3, No. 6

Effect of Prior Drug Treatment as a Risk Factor**Stacy L. Weber, Research Analyst**

Results from a national study show that 83% of inmates in state prisons report prior drug abuse, yet only two thirds of inmates have participated in a treatment program either in the community or while under correctional supervision¹. Within the Wisconsin correctional system, the reported rates of prior treatment are considerably higher than the national average. Seventy-four percent of Wisconsin offenders have undergone prior drug or alcohol treatment programs by the time of their criminal sentencing. With attendance rates in alcohol and/or drug treatment programs among offenders growing², it is important to understand how judges interpret prior treatment as a risk factor regarding sentencing.

Prior Treatment by Offense

In Wisconsin, non-violent offenders have the highest occurrence of prior drug or alcohol treatment (86%), followed by sex offenders (81%), violent offenders (77%), and drug offenders (45%).

Offenders convicted of Forgery & Uttering have attended prior drug treatment programs most often (91%), followed by robbery (86%), theft, burglary, and second degree sexual assault (all 83%), first degree sexual assault of a child (81%), second degree sexual assault of a child (78%), armed robbery (72%), possession with intent to deliver THC (58%), and finally, possession with intent to deliver cocaine (43%).

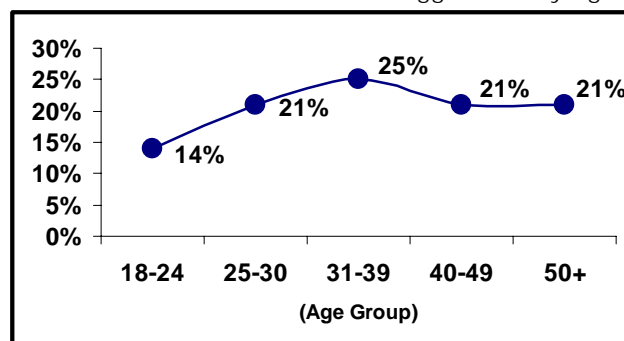
Due to a lack of data, it is currently not possible to calculate the effect of prior treatment on offenders' risk levels for each specific offense.

Effect of Age on Prior Treatment

As shown in Chart 1, prior alcohol and/or drug treatment is increasingly aggravating as a risk factor until the 30-39 year old age group. Within the youngest age group, ages 18 to 24, prior treatment was recorded by judges as aggravating in 14% of the

cases. That percentage increases to 21% of cases in the 25-30 year age group and 25% in the 31-39 year age range. In the 40-49 year age group, the percentage of cases in which prior alcohol and/or drug treatment is considered aggravating drops to 21% and stays at 21% for the 50+ group also.

Chart 1 – Prior Treatment as an Aggravator by Age



The calculated risk level for each of these age groups does not show a strong relationship to the percentage of cases that found prior treatment to be aggravating. It was expected that, within any age group, the higher the percentage of aggravating factors the higher the group's overall risk level would be because the offender's history that warrants the aggravating score is the same trend that necessitates the higher risk level. However, this is not the case. The 18-24 year age group had an overall risk level score of 2.18, 25-30 year group score was 2.25, 2.36 for 31-39, 2.42 for 40-49, and the 50+ age group was the first to have a substantial decrease in risk level due to age, decreasing to 1.75. The understanding behind this is that young individuals are given another chance to prove themselves and, thus, aren't scored as high-risk.

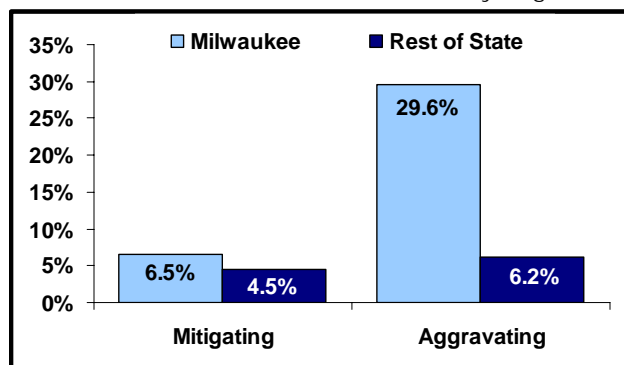
Milwaukee Compared to Rest of State

The effect of prior drug or alcohol treatment can be categorized by the judges as mitigating, aggravating,

or, if not designated by the judge, unknown. In Wisconsin, prior drug treatment is marked as an aggravating risk factor 16% of the time, a mitigating factor 5% of the time, and the effect was not recorded by the judge on 79% of worksheets.

When broken down by Milwaukee county court cases and the rest of the state's court cases, variations appear (see Chart 2). Prior treatment is checked on the worksheets as a *mitigating* factor 6.5% of the time for Milwaukee county offenders and 4.5% of the time for the rest of the state, implying that prior treatment is rarely considered mitigating regardless of location. The percentages of prior treatment checked as an *aggravating* factor for Milwaukee county offenders versus the rest of the state are 29.6% and 6.2%, respectively, which suggests that Milwaukee county judges view prior drug treatment as a more aggravating factor than the rest of Wisconsin judges.

Chart 2 – Effect of Prior Treatment by Region



However, when the actual risk factors are averaged for Milwaukee county offenders with prior treatment and offenders from the rest of the state, it appears that, though Milwaukee county judges categorize prior treatment history as aggravating more often, they still rate offenders with a lower risk level (2.18 out of 3) than the rest of Wisconsin regions (2.52 out of 3). It is expected that this is due to the fact that Milwaukee county judges more often check all factors on a worksheet, leaving few blank, subsequently decreasing the rate of unknown effects (63.9%). The rest of the state judges left the effect of prior treatment blank 89.3% of the time; undoubtedly, of the 89.3% of unknown effects, many were aggravating, and although they do not show up as such, affect the overall risk level.

Effect of No Prior Treatment

The effect of never being treated for drug or alcohol abuse shows a very different trend than that of prior treatment. Whereas the effect of prior treatment was most often aggravating, 'no prior treatment' is largely checked as a mitigating factor (41%), yet there are a substantial number of cases in which it is aggravating

(21%). This is undoubtedly due to the fact that there are two very diverse populations that could be categorized under 'no prior treatment'—those who do not have a substance abuse problem and those who do but do not actively participate in treatment services.

It is expected that offenders with drug abuse problems who have never received services are assigned to the aggravating category. Yet, surprisingly, in Milwaukee county more offenders who have undergone a treatment program have had their prior treatment labeled aggravating (29.6%) than those offenders who have not undergone any prior treatment for their substance abuse (18.3%). Instinctively, this suggests that prior treatment is actually more detrimental to the sentencing process than not partaking in a treatment program for alcohol and/or drug abuse at all. However, much like the effect of prior treatment on the overall risk level, Milwaukee county checks the factors as aggravating, but the risk level does not increase contingently. The overall risk levels (out of 3) for offenders whom have never received prior treatment for Milwaukee county and the rest of the state are 1.79 and 1.85, respectively. Thus, the effect of no prior treatment is mitigating to the overall risk level of offenders in the state of Wisconsin, yet only small differences occur geographically.

Discussion

In the Wisconsin corrections system, the effect of prior drug and alcohol treatment is significant to the overall risk level of the offender. Offenders with no prior treatment versus a treatment history are considered less of a risk in all state regions (1.85 versus 2.12, respectively) regardless of the effect being checked as mitigating or aggravating. The risk level for offenders who have had prior alcohol and/or drug treatment shows that Milwaukee county judges find offenders with prior treatment history less of a risk than the rest of Wisconsin judges.

Judges most often consider prior treatment an aggravating risk factor, especially in Milwaukee county, where the total number of cases with prior treatment as a factor is only 75 less than the rest of the state of Wisconsin combined.

¹ Bureau of Justice Statistics, *Substance abuse and treatment, state and federal prisoners, 1997*. [NCJ 172871]. Washington, DC: US Department of Justice, January 1999.

² The National Center on Addiction and Substance Abuse, *Behind Bars: Substance abuse and America's prison population, 1998*. New York: CASA.

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